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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,255	12/23/2003	Kevin Gerschefske	060012-0307440	4462

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/743,255

Applicant(s)

GERSCHEFSKE ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Terminal Disclaimer*

1. The terminal disclaimer filed on October 28, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,669,609 B2 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 30 and 33-36 are rejected under 35 U.S.C. 102(e) as being anticipated by *McBride* (US Pat. 6,595,905 B2). *McBride '905* discloses an exerciser comprising a frame assembly including a base structure 64 and an upright structure 162 fixed to the base structure and extending upwardly therefrom. The base structure has downwardly facing surfaces or engaging a horizontal surface in supported relation thereon and is structured and arranged such that the exerciser is freestanding on the horizontal surface.

An exercising mechanism 118,120 is carried by the frame assembly. Upper user interconnecting structures 126 are coupled to the exercising mechanism and are selectively extensible by an exercise of a user from an operative position at an upper end of the upright

structure. Lower user interconnecting structures 60 or 130 are coupled to the exercising mechanism and are selectively extensible by an exercise of a user from an operative position at a lower portion of the upright structure. The exercising mechanism is structured and arranged to resiliently resist the movement of the upper and lower user interconnecting structures away from the exercising mechanism. Each of the upper and lower user interconnecting structures includes a pair of pull lines 102, 104. Each includes a pair of hand or foot engaging devices 56 configured for receiving a hand or a foot of a user.

A bench assembly 22 is removably coupled to the frame assembly such that the bench assembly may be removed from the frame assembly and be securely attached to the frame assembly. The bench assembly is selectively pivoted to the frame assembly at a pivot end of the bench assembly so that the bench assembly may be moved between an operable position wherein the user may utilize the bench assembly for support, and a stored upright position wherein a free end of the bench assembly that is opposite to the pivot end is adjacent to the upright structure (see Fig. 14). The bench assembly has a user supporting surface 74 and a bench assembly support coupled to and extending from the user supporting surface. The bench assembly is movable from a retracted position adjacent the user supporting surface and an extended position for supporting the bench assembly above the horizontal surface.

#### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22-29, 31, 32, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over *McBride* (US Pat. 6,595,905 B2) in view of *Bobich* (US Pat. 5,263,916). *McBride* '905 has been discussed above, and such discussion is incorporated herein. *McBride* '905 discloses the invention as claimed except for the exercising mechanism comprising a plurality of tension coil springs.

*Bobich* teaches that coil springs are equivalent to bungee cords for use in exercise devices to provide a resilient exercise resistance (col. 3, lines 4-11).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the bungee cords of *McBride* '905 with coil springs, since *Bobich* teaches the equivalence of coil springs and bungee cords for providing a resilient resistance force in exercise devices.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 22-28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Eichorn* (US Pat. 3,501,140), *Van Straaten* (US Pat. 5,718,659) and *Wolff* CH 577,327) disclose exercisers comprising frame assemblies including upper and lower user interconnecting structures.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
January 23, 2006



**Stephen K. Cronin**  
Primary Examiner